

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-186166

DATE: AUG 26 1976

MATTER OF: Langston University--Satisfaction of Grantee Debt

DIGEST:

Subject to agreement of grantee, Department of Agriculture has discretionary authority to credit allowable indirect grant costs to reduce debt of grantee growing out of misapplied and unaccounted for funds advanced to grantee under research grant authorities. In the absence of required records of account, grantee under 7 U.S.C. § 450i is responsible for providing satisfactory evidence of allowable expenditures in order to raise a presumption of regularity in the expenditure of grant funds. Where later accounted for periods include disallowed costs, however, the presence of similar disallowable costs must be projected as present during unaccounted for periods unless there is proof to the contrary.

This decision to the Secretary of Agriculture responds to a request by Assistant Secretary Robert W. Long for our decision with respect to a plan to assess financial liability and make recovery from Langston University of claims arising out of the administration of 12 Cooperative State Research Service (CSRS) grants under 7 U.S.C. § 450i. In 1975 Department of Agriculture auditors found that Langston University had insufficient fund controls and was unable to account for the Department of Agriculture grant funds during the period July 1, 1966, through June 30, 1974. They also found that certain funds had been spent for other than grant purposes during fiscal years 1974 and 1975.

The Assistant Secretary's letter summarizes the results of the audit as follows:

"In the summary, it [the audit] stated that control over the use of CSRS advances was insufficient due to the University's inadequate fiscal accounting and reporting systems. The audit disclosed that prior to Fiscal Year 1974 there was no available documentation to support the disposition of the advances of funds made to Langston University which totaled \$409,079. The available records for Fiscal Year 1974 and Fiscal Year 1975 disclosed the following:

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- (1) As of June 30, 1974, the reported balance of CSRS funds on hand was \$152,225.89, whereas a CPA firm verified the cash balance for all University accounts as \$24,650.88.
- (2) Salaries of \$22,113.74 were charged to grants in Fiscal Year 1974 and Fiscal Year 1975 for work that did not pertain to CSRS research.
- (3) Charges to two grants in Fiscal Year 1974 were overstated by \$22,491.34 due to incorrect and ineligible charges.
- (4) Incorrect indirect costs and errors in addition amounted to \$36,119.00.
- (5) Langston University expended \$97,706.39 more than was advanced by CSRS during the period 7/1/74 - 1/31/75. This is based on a zero balance at beginning of period since the cash balance of CSRS grant funds could not be verified on 6/30/74. It also includes adjustments in Indirect Costs and deduction of Warrant No. 6487041 for \$11,670 which was cancelled (117,822.92 - 8,446.53 - 11,670 = 97,706.39). These were made subsequent to the May 20, 1975 Audit Report (60209-3-To Supplement)."

Based on this audit, advancement of funds to the University was suspended. The Assistant Secretary's letter describes the further steps taken as a result of the audit findings as follows:

"After the visit to Langston University by fiscal and audit personnel, it was determined that it would be nearly impossible to reconstruct the disposition of funds prior to Fiscal Year 1974. A CPA firm hired by the University was not able to reconstruct records for Fiscal Year 1974 expenditures. The only possible method to reconstruct the disposition of pre-FY 1974 funds would require someone, with knowledge of expenses incurred, to review the vouchers as they were processed by the State. The only person capable is the previous Research Coordinator who resigned over a year ago. In Fiscal Year 1974, the overall level of expenditures seem realistic as compared with awards and there is tangible evidence that services were rendered on

research grants and for renovation of the physical facilities used for the grant program. Annual progress reports for each grant during Fiscal Year 1967-1974 were reviewed by CSRS specialists and certified that research was progressing satisfactorily. * * * Fiscal Year 1975 records were in order and expenditures could be verified. Subsequently, since the February 1975 audit, a new Acting President as well as a new Business Manager and Accountant have been employed by the University and activity to improve the overall financial management is evident. In addition, the University employed a new Research Coordinator."

As a consequence of these developments and program considerations, Langston University was allowed to obtain advances of funds again under tighter Department of Agriculture administrative controls. The Assistant Secretary states that the University's progress in achieving fiscal accountability for Federal funds has been satisfactory.

Based on the foregoing circumstances, the letter of the Assistant Secretary proposes the following plan for our approval:

"It is proposed that Langston University utilize earned indirect cost, within the to-be-negotiated time period, to make the amount of \$135,243.58 available to support the current approved agricultural research program. The University would be required to document the amount of indirect cost earned by grants during the payback period and to provide documentation that these funds were being expended on the USDA grants that comprise the agricultural research program(s) at this Institution."

Further, the Assistant Secretary's letter indicates that there is no evidence of criminal liability for the unaccounted for or misapplied funds, that satisfactory progress is being made by the University in achieving fiscal accountability, and that the Department is taking steps to tighten the administrative oversight of the University's finances to assure that there is no reoccurrence of the deficiencies disclosed by the audit. The Assistant Secretary's letter also indicates an awareness that there may be a tendency to manipulate indirect costs as applied to repayment and says that documentation of these costs will be required during the payback period. We assume that care will be taken to assure that future

advances of funds under the existing grants are not available for use for indirect costs during the payback period.

We have held as a matter of policy, that we would decline to effect setoff (or withholding of payments) against grant funds when to do so may interfere with or inhibit the accomplishment of the governmental purposes for which the grant was made. See, for example, 43 Comp. Gen. 183 (1963). However, we would not object to the use of indirect costs earned under these grants to pay off, to the extent possible, a debt to the United States incurred by the grantees when it obtained advances or reimbursements for expenses later determined to be ineligible from those same grants.

Our concurrence in this method is, however, subject to a number of qualifications. First, the University must voluntarily agree to repay its debt in this manner. Second, the University and the Department must agree on the amount of the debt owed and must reduce the repayment agreement to writing. Third, any agreement reached must be in accord with the Federal Claims Collection Standards, 4 C.F.R. § 101.1, et seq., must have a reasonably restricted payback period and must provide for liquidation of the entire debt in the event sufficient indirect costs are not earned within that period. Finally, in its collection activities the Department should recognize the general liability of the State of Oklahoma for this debt, since Langston University is a part of the Oklahoma State system of higher education, 70 O.S. § 3201 (1971 ed.). The Department should recover the debt by setoff of other amounts owed by the Government to the State if the method proposed does not, for any reason, result in satisfaction of this debt.

The Assistant Secretary's request for our decision creates doubts as to whether the Department has accurately assessed the extent of the University's liability. The final settlement proposed totally overlooks the period from fiscal year 1967 through 1973 when "there were no records at Langston University to verify the disposition of funds" and fiscal year 1974 for which some records were available but for which a CPA firm "was not able to reconstruct records for * * * expenditures." The effect of this proposed determination would be to allow all unaccounted for expenditures for the periods in question.

The justification offered by the Assistant Secretary for such an outcome for fiscal year 1974 and prior years is that "Annual progress reports for each grant during fiscal year 1967-1974 were reviewed by CSRS specialists and certified that research was progressing satisfactorily." Additionally, for fiscal year 1974, he says, " * * * the overall level of expenditures seem realistic as compared with awards and there is tangible evidence that services were rendered on research grants and for renovation of the physical facilities used for the grant program." The essence of this justification is that as the grantees satisfactorily performed the grant program during these periods, it has, by inference, incurred allowable expenses. While such an inference is valid to support a conclusion that some expenses were incurred, it alone fails to provide a satisfactory basis to approve allowance of specific expenditures of grant funds during the unaccounted for periods.

We note that the obligation of the grantee under 7 U.S.C. § 450i (1970) to keep adequate financial records is clearly expressed in that section which reads in part:

"Each recipient of assistance under this section shall keep such record as the Secretary may prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grants, the total cost of the project or undertaking in connection with which such funds are given or used, and the amount of that portion of the costs of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit."

Failure by Langston University to comply with this and any other recordkeeping requirements represents a serious breach of its duties under these grants.

We have been informed that most of the grant expenses during fiscal years 1967 through 1973 were salaries of research staff. (For fiscal years 1967 through 1971 the grants were only \$15,956 annually.) In addition, for fiscal year 1974, physical improvements were made and may serve as evidence of grant expenditures for that year. It would appear that an effort should be made to verify from program and salary records as much of these grant expenditures as possible.

On the basis of such records, the evidence of physical improvements, and the reports of the Department's grant managers that good progress has been made under these grants, we would be willing in this particular instance to accept a limited presumption of regularity. However, since

the history of financial management of the grants in question for the 19 months prior to January 31, 1973, reflects specific instances of misapplied grant funds, we believe it can reasonably be assumed that similar errors in similar circumstances existed prior to the period for which records were kept. Therefore unless the grantee can provide proof to the contrary, the Department should make appropriate adjustments in calculating the amount of the grantee's debt.

The method the Department uses in these calculations is within its discretion. One suggestion is that it disallow the same proportion of funds, for similar types of expenses from the unaccounted for period as were disallowed for the period for which accounts are available. This amount can be ascertained by applying to the total unaudited expenditures (fiscal years 1967 through June 30, 1973), the percentage of net audit adjustments to total claimed expenditures for the 19 month period from July 1, 1973, through January 31, 1975, for which records were audited. Expenditure information for fiscal year 1974 for use in development of the applicable percentage should be available from audit work papers.

Finally with regard to establishing the amount of the University's liability, in reviewing the audit material supplied to us we found duplicate audit adjustments for the period July through December 1974 which indicate the possibility that the proposed assessment of \$135,243.53 has been overstated.

We did not make a detailed analysis to determine the amount of overstatement, a task which should be performed by Department of Agriculture staff.

The following are some apparent discrepancies:

1. The salary adjustments of \$22,113.74 appear to contain many duplications. For example, the adjustments pertaining to R. Venere on Exhibit B, Attachment 1 and on Schedule 10, Attachment 2 contain a duplicate disallowance of \$300 in gross salary. Similar duplications seem to exist for most of the other gross salary disallowances on Exhibit B.
2. The \$11,670 disallowance pertaining to architect fees on Exhibit C, Attachment 1, was included in the \$22,491.34 disallowance and was also disallowed separately in the computation on page 4 of the letter.

3. Audit adjustments of \$36,119 supported by Exhibit E, Attachment 1, are applied against grant award amounts rather than against expenditures. Since the Exhibit heading identifies the workpaper as a review of budget amounts, disallowances for items such as addition errors of \$6,300 is not considered since there is no showing that the disputed amounts were actually charged as grant expense.

Also, the indirect cost disallowances on Exhibit E, Attachment 1, conflict with the showing on schedules 2 through 10, Attachment 2 of a consistent grantee failure to claim allowable indirect cost.

R.F. KELLER

Acting

Comptroller General
of the United States